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COMMITTEE CHAIRMAN: FINANCIAL INSTITUTIONS

RQ-1049

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Opinion Committee

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The Honorable Dan Morales
Attorney General, State of Texas
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Attorney General's Opinion

Dear Attorney General Morales,

As Chairman of the House Financial Institutions Committee, I am asking for your opinion with respect to three issues raised by House Joint Resolution 31. First, as you are aware, Section 50(a)(6)(P)(i)-(v), defines the list of individuals who may "make" home equity loans. The amendment requires that an equity loan be "made" by one of the five categories of lenders described in the above-cited section.

Certain attorneys argue that "making" a home equity loan includes the operative activity of "closing and funding" the mortgage loan. Others have taken the position that the verb "made" as used within the statute is broader in scope and encompasses all activities associated with the origination of an equity loan. A specific question is:

> May a mortgage loan broker who is not one of the five types of entities described within the amendment take an application for a home equity loan, provided that the application for credit is closed and funded by one of the five types of entities authorized to make home equity loans?

A second issue concerns Section 50(a)(6)(E), which states that an equity loan cannot require

> "the owner or owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, service the extension of credit that exceeds, in the aggregate three percent (3%) of the original principle amount of the extension of credit."

The argument has been made that the parenthetical "in addition to any interest" is meant to exclude from the calculation of the 3% fee cap all charges which are normally denominated or considered to be "interest." This would, in essence, mean that the debtor could be required or agree to pay, out of pocket, three points for closing costs (lender and title fees, for example) and three "discount" points to "buy down" his interest rate.

> The question is whether or not included within this 3% fee are items normally considered to be "interest" under Article 5069 of the Texas Revised Civil Statutes? Specifically, "discount points" are normally considered interest and not "fees" (and, conversely, items such as title charges, lender's attorney fees and origination fees are generally not considered interest under Article 5069.)

A third issue concerns one of the five entities who can make home equity loans. As you are aware, Section 50(a)(6)(P)(ii) sets forth one of these entities. These categories include "a person approved as a mortgagee by the United States Government to make federally-insured loan. . . "

Clarification is requested with respect to two issues raised by this definition.

> 1. Does a mortgage broker or bank which is an approved VA lender (that is, a lender approved by the U.S. Department of Veteran's Affairs to make VA-guaranteed loans) qualify as a mortgagee approved by the United States Government to make federally-insured loans?
>
> 2. Does an FHA-approved "loan correspondent" qualify as an approved entity pursuant to the above-cited provision? Specifically, does a loan correspondent qualify as a mortgagee approved by the United States Government?

As the effective date of the amendment is January 1, 1998, your attention to these questions is urgently requested. Thank you in advance for being of assistance.

Sincerely,

Representative Kenny Marchant